IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7305 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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B G SAPARIYA

Versus

PRADIPKUMAR PUJARI

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Appearance:

MR KG VAKHARIA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the order dtd. 3rd October, 1988 passed by the Collector, Bhavnagar, Annexure-A to the petition.

2. The case of the petitioner was that he was a consulting physician and was a leading Doctor of Mahuva city. He was elected as a Counsellor between 1979 to 1984. It was his case that he was a Chairman of the Development Board, which, according to him, was a small committee of Mahuva Municipality. Certain resolutions were passed by the Mahuva Municipality and land was allotted to a co-operative society on certain terms and conditions. It was alleged that in the allotment of land, serious illegalities and irregularities were committed by the petitioner in collusion with the Chief Officer of the Municipality.

3. When attention of the Collector, Bhavnagar, was invited by one Ashokkumar Dhirajlal Brahmbhatt, the Collector, in exercise of powers under Section 258 of the Gujarat Municipalities Act, 1963 (`the Act' for short), set aside those resolutions and ordered status-quo ante. He further held that the office bearers had acted contrary to and in violation of the provisions of the Act and the petitioner was personally liable under Section 70 of the Act for the loss caused to the Municipality. He, therefore, directed that the petitioner who was Chairman of the Development Board should pay the amount to the Municipality and accordingly an order was passed, directing him to pay the said amount.

4. The petition came up for admission in 1988. Rule was issued and ad-interim relief in terms of para 13(B) was granted. Para 13(B) reads as under;

> "Pending admission and final hearing of this petition, an interim stay staying the operation of the order Ann.A dtd.3/10/88 passed by the Collector, Bhavnagar, District ; Bhavnagar, respondent NO.1 herein may kindly be granted and the respondents their agents and servants be restrained from taking any action in pursuance of the impugned order Ann.A."

5. Today, the matter is called out for final hearing. Several contentions were raised by learned counsel Mr. Mehul Vakhariya for Mr. K.G. Vakhariya for the petitioner. In my opinion, however, it is not necessary to enter into larger question. The learned counsel is, however, right in contending that the order was passed holding the petitioner liable under Section 70 of the Act. Since the order adversely affected the petitioner, the Collector, ought to have issued notice to him, called for his explanation and ought to have

observed the principles of natural justice and fair play. So far the order impugned in the present petition is concerned, it is clear that civil consequences ensued and the petitioner was held liable. It was, therefore, obligatory on the part of the Collector before taking such action and before holding the petitioner liable, to issue Show Cause Notice, call for explanation and observe the principles of natural justice and fair play.

6. The point is covered by a decision of the Division Bench of this Court in H.H. Parmar Vs. Collector of Rajkot and others, 1979(2) G.L.R. 97. In that case, a resolution was passed by the Municipality appointing the petitioner and the petitioner was actually appointed and was holding the post. Without issuing notice, the appointment was cancelled by the Collector. The action was held to be illegal and was set aside by the Division Bench of this Court holding that the Collector could not have taken the action without issuing notice to the person who was likely to be affected by an order passed by the Collector under Section 258 of the Act.

7. In para 4 of the petition, the petitioner has stated that he was not served with any Show Cause Notice and was not not afforded opportunity to meet with the charges levelled against him, reflected in the order at Annexure-A. In these circumstances, the order can be said to be in violation of principles of natural justice and deserves to be quashed and set aside.

8. In view of the foregoing reasons, in my opinion, the order passed by the Collector, Bhavnagar deserves to be quashed and set aside, holding the petitioner personally liable. Looking to serious allegations against the petitioner, however, it is open to the Collector, Bhavnagar to issue notice and to pass an appropriate order after observing the principles of natural justice. Since I am setting aside the order only on the ground of violation of principles of natural justice, I may not be understood to have stated anything on merits of the matter and as and when the matter will be heard by the Collector, he will decide the same strictly on its merits without being influenced by this judgement. The petition is, accordingly allowed. Rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs.

9. Learned counsel for the petitioner submitted that in case the Collector holds petitioner liable and an order will be passed directing him to make the payment of

any amount, it may not be implemented for some time so as to enable the petitioner to take appropriate action in accordance with law. In view of the fact that the petition was admitted in 1988 and ad-interim relief was granted which is operative till today, in my opinion, the request is reasonable. It is directed that if the order of the Collector, Bhavnagar, is against the petitioner, the same will not be implemented for a period of four weeks from the passing of the order. Rule made absolute. No costs.

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